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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/058,805

01/30/2002

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Q68279

4726

23373 7590 12/17/2009
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EXAMINER

NGUYEN, THANH T

ART UNIT

PAPER NUMBER

2444

NOTIFICATION DATE

DELIVERY MODE

12/17/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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1 RECORD OF ORAL HEARING
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3 UNITED STATES PATENT AND TRADEMARK OFFICE
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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 *Ex parte* HIROYUKI TOMOIKE
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13 Appeal 2009-006329
14 Application 10/058,805
15 Technology Center 2400
16

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18 Oral Hearing Held: November 17, 2009
19

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21 Before KENNETH W. HAIRSTON, MARK S. HOFF, and BRADLEY W.
22 BAUMEISTER, *Administrative Patent Judges*.
23

24 ON BEHALF OF THE APPELLANT:
25

26 ARTEM N. SOKOLOV, ESQ.
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31 The above-entitled matter came on for hearing on Tuesday, November
32 17, 2009, commencing at 10:11 a.m., at the U.S. Patent and Trademark
33 Office, 600 Dulany Street, Alexandria, Virginia, before Debbie Courville,
34 Notary Public.

P R O C E E D I N G S

THE USHER: Calendar No. 46, Mr. Sokolov.

JUDGE HAIRSTON: Thank you. Hi, there, Counselor, do you have a card? Thank you.

MR. SOKOLOV: Good morning, Your Honors.

JUDGE HAIRSTON: Good morning.

MR. SOKOLOV: Just let me know when you're --

JUDGE HAIRSTON: We're ready, you may begin.

MR. SOKOLOV: My name is Art Sokolov. She introduced me and I'm here on behalf of Sughrue Mion for Appeal No. 2009-006329 and it's Application No. 10/058,805. Before I go into the claims of the case, if I could just take a minute to discuss our invention a little bit and what the problem was and then go through the claim. Do you by chance have copies of the Patent in front of you so I can refer to the figures?

JUDGE HAIRSTON: Yes.

MR. SOKOLOV: Okay, great. Now, generally the invention is related to a mobile communications system and data transferring method. And what we've found the problem is there's a bottleneck at a certain point in the data transmission, and that point is when data is transmitted over the radio waves. So at that point communication is very slow and that creates -- that makes data transmission over the whole range slower. So what we'd like to do is get rid of this bottleneck, and the way we go about that is instead of using one mobile station to transmit, we're pooling the resources of available mobile stations or sharing the available mobile stations to

1 transmit data faster. So, as an example, if I can transmit two megabytes a
2 second through one, if I split the data into four parts and transmit at two
3 megabytes per second over four mobile stations, then the data will transmit
4 overall faster. And so maybe I can go over Claim 1 with reference to Figure
5 1 and it will help to explain what I mean.

6 If I could have you look at Figure 1 of our Application, we have --
7 start with Claim 1 as it matches up to the figure. So the Claim requires a
8 mobile communications system comprising a portable information terminal
9 (1) and that's down at the bottom of the figure, portable information
10 terminal, unit 1. And then we have a plurality of mobile stations and those
11 are labeled MS-21 through MS-2N, and those are capable of participating
12 simultaneously in communication with a portable terminal unit. Then the
13 mobile stations themselves are -- communicate with a packet mobile
14 switching center, which is P-MSC 41 and 42, through a radio access
15 network. And that's the network that I was talking about, that's where the
16 bottleneck is created. So we have a plurality of mobile stations that attempt
17 to get rid of that bottleneck. And then data is transmitted over the mobile
18 data network (5) and then through Internet (9) over to the contents server
19 where data is stored or downloaded from.

20 Now, the last limitation of the Claim, the portable information
21 terminal unit, is adapted to download or upload data from or to said contents
22 server (10), that being the bottom and the top of Figure 1, 1 and 10, through
23 the plurality of mobile stations MS-21 to MS-2N. Now, one thing I want to
24 mention here and in terms of how the art is applied is the relationship that's

1 set out here, and that is the portable information terminal unit communicates
2 through the mobile stations with the contents server.

3 And with that, we turn to the rejection --

4 JUDGE HAIRSTON: Okay, before we do that, the last three lines of
5 Claim 1 wherein the data is divided into a plurality of pieces and each of the
6 plurality of mobile stations uploads or downloads only a portion of the
7 plurality of pieces of the data. Walk me through the spec. Where is that in
8 your spec?

9 MR. SOKOLOV: Yes, paragraphs 65 and 66, Your Honor.

10 JUDGE HOFF: Your original response doesn't have paragraph
11 numbers.

12 MR. SOKOLOV: Okay, I'm sorry, I was referring to the publication
13 of the specification.

14 JUDGE HOFF: I understand, unfortunately, we don't have the Patent
15 Application -- in front of us, we have the original spec.

16 MR. SOKOLOV: Let me read those paragraphs to you.

17 JUDGE HOFF: Yes.

18 MR. SOKOLOV: Okay, in paragraph 65 it says "[w]hen the P-MGS
19 7 receives the IP datagrams from the content server 10, the P-MGS 7
20 searches a PDP-Context on the basis of address (IP address 1)," and a PDP
21 context here explains which mobile stations are available in communication
22 with a portable information terminal unit --

23 JUDGE HAIRSTON: Excuse me, that's on page 16 of the spec, okay.

24 JUDGE HOFF: Yes.

1 MR. SOKOLOV: Okay, thank you, Your Honor -- to which data is to
2 be transmitted and recognizes that the user IP address (1) has been registered
3 with a plurality of mobile stations, capsules that receive IP diagrams along
4 with registered TIDs and successively transmits the capsule data to P-MSC
5 (42). Now, in 66 the address of the capsulated IP diagrams to be transmitted
6 is the IP address of P-MSC (42), the transmission ratio of the MS-21 to MS-
7 2N for the IP address (1) may be even or arbitrarily designated. And also in
8 paragraph 86 which I understand you don't have, I'll read that to you. "As
9 was described above, according to the embodiment of the present invention,
10 when data is transferred in a public mobile data communication using a short
11 distance high speed wireless communication technology such as Bluetooth,
12 it can be expected to improve throughput of a data transfer from a view point
13 of a user, because wireless line resources of a plurality of mobile stations
14 other than that of a local mobile station can be temporarily used."

15 JUDGE BAUMEISTER: Page 20, line 14.

16 JUDGE HAIRSTON: These are very, very broad disclosures for a
17 very specific claim limitation, if you understand my meaning. I'm reading
18 page 16 and I'm reading page 20, and the only word I see that helps you is, is
19 the word either. The transmission ratio of the mobile stations for the IP
20 address of this portable information terminal unit it says may be either.

21 JUDGE HOFF: What is the meaning of transmission ratio in that
22 context?

23 MR. SOKOLOV: I think what portion of the data is transmitted to
24 each mobile station. So you can transmit, you know, just split it up evenly

1 so each one takes, for example, a fourth if we have four mobile stations, or
2 you can transmit most over one part and then, you know, whatever the limit
3 of that mobile station is and have the rest filled out by the available
4 resources.

5 If you go on to page 16, and it's my paragraph 68, it also talks about
6 the mobile stations (21). Once they receive the data, then they transmit that
7 data to the portable information terminal unit (1). With respect to the Claim
8 1, there's at least two limitations that are missing from the art relied on by
9 the Examiner. The two pieces of art relied on by the Examiner are Martin
10 and the Chern references, and the first limitation that's missing is the second
11 limitation in the Claim, if plurality of mobile stations capable of
12 participating simultaneously in communication with said portable
13 information terminal unit. So if I could take those in order, with respect to
14 Martin, the deficiency of Martin is illustrated in Figure 2a of that reference.
15 And Martin is generally directed to viewing Webpages with those things on
16 a mobile device, and what they say is it's sometimes very different to view a
17 Webpage on a mobile device from a computer, for example, in the way that
18 things are organized there, where you store that information is very different.
19 And so what they do is they keep some of the information on a server and if
20 user can log in and the information that's very useful to him, for example,
21 Webpages he recently visited are available right away making it easier for
22 the user to access those features.

23 Now, if you take a look at Figure 2a of Martin, the Examiner has
24 relied on the mobile device down at the bottom of Figure a, the 106-1, for

1 example, as the portable information terminal unit in our Claim. But the
2 Examiner also relies on mobile device 106-1 as the mobile, as the mobile
3 station of, of our Claim. And what the Examiner says is that the plurality of
4 mobile stations are in communication with Internet (102), but in our case, it's
5 very -- you can see from comparison of our Figure 1 with Figure 2a, we
6 have one portable information terminal unit which is in communication with
7 a plurality of mobile stations, and that those stations are in communication
8 with the server. Here there is a plurality of mobile devices, but each one is
9 individually in communication with the server, and there's no
10 communication to a single unit and plurality of mobile stations. And if the
11 Examiner is construing the Internet (102) as a portable information terminal
12 unit, then the last limitation could not be met because as -- when we through
13 the Claim, their relationship is portable information terminal unit to mobile
14 station to contents server. And that relationship couldn't be met if the
15 Internet was construed as a portable information terminal unit.

16 Now, Chern is similarly deficient and that reference is directed to
17 attaching advertisements to text messages or SMS messages that go out to
18 the phone. And a good example of what Chern is all about is Figure 16
19 which shows, for example, when you're going to the airport and you get a
20 text message with your flight number, they also attach, for example, an
21 advertisement for Starbucks to that. So when you're at the airport, you can
22 go and get Starbucks using a coupon that they sent you. That's what Chern
23 is directed to, and Figures 1 and 2 of Chern show the general structure of the
24 system. So in reference to these figures, for example, in Figure 2, there's a

1 database where most of the information is stored, and then you have a
2 wireless handset, and those two are in communication over the wireless
3 network (140). Now there's three reasons why Chern is deficient. The first
4 reason is the Examiner relies on the base stations described in Chern as the
5 mobile station described in our application -- in our Claim 1, and that's not
6 correct. First, our specification makes a distinction in a mobile station and a
7 base station, and reading the Claim in light of the specification, the
8 Examiner should have recognized that distinction.

9 Now, I could point you to -- and I actually have the page number for
10 that for you here. It's on page 7, lines 16 to 18, where it describes a base
11 station. Now --

12 JUDGE HAIRSTON: Page --

13 JUDGE HOFF: Column 7.

14 JUDGE HAIRSTON: Oh, column 7. Go ahead, I'm sorry.

15 MR. SOKOLOV: Now, the second distinction there is that a base
16 station cannot be the same as a mobile station because a base station is
17 described in Chern as being fixed whereas by virtue of our Claim language
18 and the description in the specification, the mobile stations are mobile. They
19 can be moved around, they communication, for example, with Bluetooth, so
20 I can have them anywhere in the vicinity and they're not fixed to a certain
21 location. In particular, Chern describes that you can triangulate the location
22 of the mobile handset by using the fixed locations of the base station, and
23 you can triangulate where the mobile station is. So that's one example of
24 why in Chern base stations are fixed.

1 Now, the third reason is that the Claim requires for a plurality of
2 mobile stations to participate simultaneously in communication with a
3 portable information terminal unit, and here, the Examiner admits that this
4 cannot be met. Even if a base station was construed as a mobile station for
5 the purpose of our Claim, Chern explicitly sets forth that a base station
6 handles -- a single base station handles communication for all wireless
7 devices within a cell. So all the wireless devices within the range of a base
8 station communicate with that single base station. They don't
9 communicate with the plurality of base stations simultaneously nor do
10 they transfer information through a plurality of base stations. As support,
11 the Examiner relies on a quote in the Chern reference, and I'll read that quote
12 to you. It says "[n]etwork 140 is typically comprised of a plurality of base
13 stations that provide relay points for communication." And while it does say
14 that there's a plurality, that's simply a description of the network, and, in fact,
15 it supports our position because it explains that they're used as a relay form.
16 So in series one to another, that's how they communicate. They don't
17 communicate through a plurality simultaneously as our Claim requires.

18 Now, I mentioned at the outset that there were two Claim limitations
19 missing, and the second limitation is the last limitation of the Claim that
20 Your Honors asked me about earlier. And that limitation is the data being
21 divided into plurality pieces and then sent through the mobile stations, each
22 of the plurality of mobile station uploads or downloads only a portion of the
23 plurality of pieces of data. Now, the Examiner has conceded that the Martin
24 reference doesn't teach this limitation. So with focusing on Chern, there's no

1 such disclosure either. The only disclosure the Examiner points to is a
2 paragraph which describes how the actual invention of Chern is carried out,
3 where the program, the underlying program, that carries out the invention is
4 stored. And what they say is you can have a portion of the program stored
5 on the server and a portion on the handset. And the reason for that is simple,
6 it's because you can't store very much program on a mobile phone because
7 there's simply not enough room. And if you're using portions of the program
8 only at very rare times, for example, if you need a map of a certain area, you
9 don't need to store that map at all times on your handset. When you need the
10 map, you can simply request that it be given to you.

11 Now, the disclosure only says that a portion of the program is stored
12 on the server and a portion is on the handset. There's no description there of
13 dividing data and then sending the data through a plurality of base stations.
14 And even if a program is split into portions and transferred, the portion that's
15 being transferred can be consider like a chunk of data. And when that chunk
16 of data is transferred from one -- from the server to the handset, for example,
17 it's transferred as one piece of data. It's not split and then transferred to
18 increase how fast the data is being moved, it's simply where the information
19 is being stored at the time that it's needed. I don't think that paragraph can
20 be fairly read as disclosing the last limitation of our Claim. That's all I have.

21 JUDGE HAIRSTON: Okay, any questions?

22 JUDGE HOFF: No.

23 JUDGE BAUMEISTER: No.

24 JUDGE HAIRSTON: Thank you, Counselor.

Appeal 2009-006329
Application 10/058,805

- 1 MR. SOKOLOV: Thank you very much.
- 2 (Whereupon, the proceedings, at 10:30 a.m., were concluded.)